

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-10987-DFM
)	(13-O-10988)
PATRICK M. PASSENHEIM,)	
)	DECISION AND ORDER OF
Member No. 140752,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
)	

Respondent Patrick M. Passenheim (Respondent) was charged with failing to comply with probation conditions imposed pursuant to two Supreme Court orders. He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

¹ Unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 7, 1989, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 5, 2013, the State Bar filed and properly served the NDC in this matter on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was returned to the State Bar, indicating that it was delivered on "4/8" and received by Alex Passenheim.

Thereafter, the State Bar (1) sent a letter by first-class mail to Respondent's membership records address, with a courtesy copy of the NDC and notice of the State Bar's intent to file a motion for entry of Respondent's default if a response to the NDC was not received by May 10, 2013; (2) attempted to contact Respondent by telephone at his membership records telephone number and left a message asking Respondent to return the call; (3) sent an email to Respondent at his membership records email address;³ (4) contacted the assigned probation deputy, who provided an alternate telephone number for Respondent; and (5) called the alternate telephone

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

number provided by the assigned probation deputy and left a message asking Respondent to return the call.

Nevertheless, Respondent failed to file a response to the NDC. On May 15, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, at his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.⁴ Respondent did not file a response to the motion, and his default was entered on June 5, 2013. The order entering the default was filed and properly served on Respondent at his membership records address by certified mail, return receipt requested.⁵ The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent has not to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 11, 2013, after the required waiting period had expired, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, at Respondent's membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it had one contact with Respondent since June 5, 2013, the date Respondent's default was entered and the

⁴ Exhibit 2 to the State Bar's petition for disbarment shows that the return receipt for the motion for entry of respondent's default was received by Jacqueline Pfiffner.

⁵ The return receipt for the order entering Respondent's default was returned to the State Bar Court indicating its delivery on June 7, and receipt by Jacqueline Pfiffner.

default order was served;⁶ (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has made a payment as a result of Respondent's prior conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 14, 2014.

Respondent has three prior records of discipline.⁷ Pursuant to a Supreme Court order filed on May 19, 1992, Respondent was suspended from the practice of law for three years, the execution of which was stayed, and he was placed on probation for three years subject to conditions, including that Respondent be actually suspended for two years and until he has shown satisfactory proof of his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent was disciplined based on his conviction of conspiracy to distribute cocaine, a crime involving moral turpitude.

Pursuant to a Supreme Court order filed on December 10, 2008, Respondent was suspended from the practice of law for four years, the execution of which was stayed, and he was placed on probation for four years subject to conditions, including that he be actually suspended for 30 months and until he makes and provides proof of specified restitution and until he has shown satisfactory proof of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in this matter to (1) failing to serve upon the State Bar

⁶ The petition for disbarment, p. 4, lines 3-9, stated that "[o]n June 18, 2013, Respondent called and left a voicemail message requesting a call back to discuss the 'Notice of Intent to File Motion for Default' letter dated May 2, 2013." The assigned deputy trial counsel returned Respondent's call using the telephone number left by Respondent in his message. The assigned deputy trial counsel's call was answered by Respondent's ex-wife who informed the assigned deputy trial counsel that Respondent no longer resided at that address.

⁷ The court admits into evidence the certified copies of Respondent's prior records of discipline, attached as exhibits 3 and 4 to the petition for disbarment. However, such exhibits do not reflect Respondent's earlier 1992 prior discipline. The court therefore takes judicial notice of the pertinent State Bar Court records regarding Respondent's 1992 prior discipline, admits them into evidence, and directs the Clerk to include copies in the records of this case.

written notice of his employment of a disbarred member of the State Bar; (2) failing to notify the State Bar in writing that he no longer employed the disbarred member of the State Bar; (3) committing acts involving moral turpitude, dishonesty or corruption by misappropriating \$950 in client funds; and (4) failing to maintain client funds in a client trust account.

Pursuant to a Supreme Court order filed on April 21, 2011, Respondent was suspended from the practice of law for five years, the execution of which was stayed, and he was placed on probation for five years subject to conditions, including that he be actually suspended for a minimum of the first 48 months and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent stipulated in this matter to failing to comply with all conditions attached to a disciplinary probation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 13-O-10987 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with specified probation conditions imposed by the Supreme Court in its April 21, 2011, Order.

Case Number 13-O-10988 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k), by failing to comply with specified probation conditions imposed by the Supreme Court in its December 10, 2008, Order.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on Respondent under rule 5.25;

(2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, as the State Bar (a) filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address; (b) sent a letter to Respondent with a courtesy copy of the NDC and notice of the State Bar's intention to file a motion for entry of default by first-class mail at his membership records address; (c) sent an email to respondent at his official membership records email address; (d) telephoned Respondent at his membership records telephone number; (e) contacted the assigned probation deputy; and (f) attempted to reach Respondent at the alternate number provided by the assigned probation deputy for Respondent;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Patrick M. Passenheim**, State Bar number 140752, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Patrick M. Passenheim**, State Bar number 140752, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February ____, 2014

DONALD F. MILES
Judge of the State Bar Court